



Request for Proposals

Glendale Tech Accelerator Operator

Release Date: Thursday, August 2, 2018

Submission Date: **5 pm on Thursday, September 13, 2018**

The City of Glendale ("City") invites qualified respondents to submit a proposal for the operation and program management of a Tech Accelerator Program ("Accelerator") located in Glendale. Proposals must be submitted in accordance with all requirements of this Request for Proposal (RFP). Any questions regarding this RFP should be directed to:

Jennifer McLain Hiramoto

Principal Economic Development Officer
Glendale Economic Development Corporation

633 East Broadway, Suite 201

Glendale, California 91206

Phone: 818-548-2005

Email: JHiramoto@GlendaleCA.gov



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NOTICE OF PROHIBITION OF COMMUNICATION WITH, AND GIFTS OR GRATUITIES TO, THE CITY AND OTHERS

A. From the date the report to City Council recommending the issuance of this RFP is published until the date on which the City awards a contract, if any, a Proposer must not directly or indirectly give, furnish, donate, or promise any money, compensation, gift, gratuity, or anything of value to the Glendale City Council or any City employee for the purpose of, or which has the effect of:

1. Securing or establishing an advantage over other Proposers;
2. Securing or recommending the selection of the Proposer's Proposal; or
3. Securing or recommending a Contract award to any Proposer.

Violation of the forgoing prohibitions will constitute grounds for rejection of a proposal(s). Such rejection may be made within the sole and absolute discretion of the City of Glendale.

B. As more specifically set forth herein below under "Submission Deadline and Requirements," the deadline for receiving proposals in response to this RFP is 5:00 pm on Thursday, September 13, 2018. At all times following this deadline, and continuing until the City awards a contract, if any contract is awarded (the "Review Period"), all Proposers and their surrogates are prohibited from communicating in any manner with any Glendale City Council member and City employee involved in the RFP process unless expressly authorized by this RFP. This prohibition means that Glendale City Council members and City employees involved in the RFP process will not hold any meetings, conferences, or discussions via email, telephone, in-face, any form of social media or otherwise, with any Proposer during the Review Period. Provided, however, proposers and their representatives are not prohibited from making oral statements or presentations in public to one or more representatives of the City during a public meeting, and proposers may write to the City Council as a whole *after* City staff written recommendations are published in anticipation of a public meeting.

INTRODUCTION

The City of Glendale (“City”) is committed to supporting and growing business enterprises that improve the City’s economy. Since the adoption of the Glendale Tech Strategy (“Tech Strategy”) in January 2017, City Staff has implemented and/or facilitated a variety of efforts focused on the local technology and innovation sector. As the next step the City is seeking proposals from highly qualified respondents to operate and manage a pilot Tech Accelerator program that will support and grow the local technology industry.

BACKGROUND

In recent years, the City’s Economic Development Division (“Economic Development”) has focused efforts on creating a vibrant Downtown district, including attracting office users to fill downtown vacancies. As a result, Downtown Glendale is flourishing with a variety of shopping, dining, business, and residential options. The success of the City’s efforts motivated the City Council to develop a plan that would bring additional success to Glendale, this time in the technology sector. On February 23, 2016, the City Council retained Estolano LeSar Advisors to evaluate the tech sector in Glendale and develop a roadmap for Glendale’s Tech sector.

The Glendale Tech Strategy report revealed that Glendale’s tech economy is diverse and that there are effective strategies to support and enhance the industry subsectors. Glendale is already home to the Walt Disney Company, Avery Dennison, Legal Zoom, Age of Learning, USC Verdugo Hills Hospital, and Service Titan, among others. In total there are approximately 1,029 firms in Glendale that identify as tech firms. In addition, the Glendale Tech Strategy report revealed a technology sector ripe with innovation and talent. Nearly a third of working age Glendale residents hold a bachelor’s degree or higher. With thirty-two percent of all Glendale residents having advanced degrees in a Science, Technology, Engineering, Math (STEM) related field. Overall, Glendale’s tech firms employ approximately 41,000 people and yield approximately \$5.3 billion in total sales. More information on the Tech Initiative can be found on the City’s Tech Initiative webpage.¹

CURRENT TECH STRATEGY EFFORTS

Since the adoption of the Tech Strategy in January 2017, City Staff has implemented and/or facilitated a variety of efforts focusing on the local technology sector, including:

- Continued the Glendale Relationship Initiation Team (GRIT) to engage Glendale’s top tech employers to further promote Glendale as a tech hub and business-friendly City;
- Continued Glendale Tech on Tap, a monthly meet-up event that features tech entrepreneurs in a casual environment. Tech on Tap has held more than 28 events with approximately 1,300 attendees total;
- Continued Glendale Tech Week, a local conference featuring local entrepreneurs from companies with an attendance of approximately 1,500 guests. Tech Week 2018 will take place on September 15-21, 2018;

¹ <https://www.glendaleca.gov/government/departments/glendale-economic-development-corporation-/business-attraction/technology-cluster>

- Launched the Glendale Tech Week Pitchfest in 2017 where nearly 40 companies applied to compete for a \$25,000 prize package;
- Received THE Glendale Chamber of Commerce Award for Project of the Year in 2018;
- Developed a Tech Business Toolkit that will provide guidance and a list of resources to companies looking to start a business in the City of Glendale;
- Held the first ever Executives in Innovation Roundtable at Age of Learning on June 1, 2018. Chief Executive Officers, Founders, and Human Resources Executives of nearly 20 Glendale-based companies came together to forge new relationships, discuss talent attraction and address common issues facing their businesses;
- And many more.

TECH STRATEGY RECOMMENDATIONS

The Tech Strategy calls for finding and creating high quality space that attracts and promotes tech growth by providing high-quality and diverse real estate space for tech companies of all sizes.

Brand Boulevard is fast becoming the place for emerging and established tech companies. For companies in need of flexible space for prototyping or assembly, the City offers a variety of flexible, industrial options in West Glendale. For early-stage start-ups, however, a different type of office product is needed to ensure that they have the resources to grow and thrive. For start-ups that are ready to take the next step, accelerators offer a time-bound cohort based program that includes mentorship and educational components that often end with a public demonstration event. As such, the City of Glendale has recognized this as an important part of a thriving tech ecosystem, which is why the City Council has authorized staff to move forward with the development of an accelerator program.

Accelerators have been shown to have a positive impact on regional entrepreneurial environments. According to the Harvard Business Review, “Metropolitan areas where an accelerator is established subsequently have more seed and early-stage entrepreneurial financing activity, which appears not to be restricted to accelerated startups themselves, but spills over to non-accelerated companies as well — occurring primarily from an increase in investors.”²

Glendale is a tech hub that is slowly but surely establishing an identity as a tech center. Growing an accelerator program will further highlight local innovation and will also provide local companies with the tools and support they need to succeed.

GOALS AND OBJECTIVES

Glendale’s Accelerator Program should be able to:

1. Showcase the local start-up community and provide emerging companies with the tools and support they need to succeed and thrive in Glendale.
2. Connect emerging companies to local entrepreneurs and innovators through programming, mentorships, and business development that foster tech cluster growth.

² What Startup Accelerators Really Do. *Harvard Business Review*. March 1, 2016. <https://hbr.org/2016/03/what-startup-accelerators-really-do>.

Qualified respondent should be able to achieve the following objective:

1. Establish, launch, and operate a Tech Accelerator program;
2. Develop a marketing and recruitment plan for companies;
3. Develop programming that would include, but is not limited to: business coaching, networking, and investment opportunities;
4. Develop quantifiable metrics to gauge accelerator success;
5. Identify sources of matching funds and/or in-kind services for the accelerator;
6. Emphasize the recruitment of local, Glendale-based companies in the selection process.

PROJECT PROPOSAL

Respondents may include individuals, private companies, venture capital firms, seed accelerators, non-profit organizations, industry groups, academic or research institutions, co-working spaces, or a combination of the above. The City welcomes partnerships as there are multiple elements to the Accelerator that require various areas of expertise. The ideal respondent will demonstrate proven relationships with angel investors, VC firms, and other seed-stage investors that would be willing to meet with and potentially fund companies, as well as have access to a wide network of mentors in the tech sector. Proposals that include Glendale-based organizations or individuals are preferred.

The proposal should follow the following format:

- A. Title Page and Cover Letter
- B. Qualifications, Experience, and Past Performance
 - i. Prime and Subcontractor Information
 - ii. Key Personnel
 - iii. Relevant Experience
 - iv. References
- C. Program Plan
- D. Timeline
- E. Space
- F. Branding and Marketing
- G. Budget

A complete proposal must include the following:

A. Title Page and Cover Letter

1. Title Page
2. Cover Letter that describes what is unique about your team and proposed approach. It should also address why the City should be interested in your team rather than others in the market.

B. Qualifications, Experience, and Past Performance

1. Prime and Subcontractor Information
 - i. Entity Name (indicate if Prime or Subcontractor);
 - ii. Primary contact name, title, address, phone number, email address;
 - iii. Type of entity, year and state in which registered (if applicable);
 - iv. List of owners, partners, or members;
 - v. Summary of the respondent's organizational history and background;
 - vi. Brief overview of functions to be performed in the accelerator program; and,
 - vii. Evidence of adequate resources (staff, financial capacity, capital) to develop and maintain programming.
2. Key Personnel
 - i. Identify all key personnel for this project, including their roles on the project and qualifications. Indicate a Managing Director, who will be the main point of contact and liaison with the City. Attach resumes describing their education and relevant experience (see below) for project personnel.
3. Relevant Experience
 - i. Provide three (3) to five (5) examples of projects completed within the last five years that demonstrate the respondent's experience with accelerator or similar programs. For each example, identify:
 - Name and location of the project or program
 - Ownership, financing/equity sources
 - Current status of the program
 - Date launched
 - Description of physical space used for the program, including square footage, uses and the space was obtained
 - Description of Team Members involved (indicate roles)
 - Include metrics, such as: number of companies; stage of company development; level of funding received by members; and number of jobs created by members
4. References
 - i. Include references for each project listed in the Relevant Experience section above. References should include: Full name, title, organization, phone number, email.

C. Accelerator Program Plan

Provide a detailed description of how the goals and objectives outlined for the Accelerator will be achieved. Include tasks, methodologies, and a description of the team member's involvement throughout the process. The City encourages innovation in the proposed Program Plan and does not prescribe a specific model. Respondents should provide detailed information that will enable the City to evaluate the respondent's ability to timely and competently operate the Accelerator, including the following:

1. The respondent will provide a detailed description of the Accelerator recruitment process, describing the outreach strategies used to identify and secure companies. Proposals that focus their outreach and recruitment to targeted populations (Glendale residents/companies, women, veterans, low-income entrepreneurs, etc.) with a strong preference for locally based companies are highly preferred;
2. A detailed description of services offered to companies and by whom, e.g. mentorship, talent acquisition, access to capital, business education, talent acquisition, etc.;
3. Description of how the proposed program will advance the goals of the Glendale Tech Strategy and create clear connections between the program and the larger Glendale area innovation ecosystem;
4. Description of how this Accelerator will be different from or should be different from other programs in Los Angeles County;
5. A description of the technological focus that the Accelerator will serve (if any), and a justification for the focus, including why that focus was selected;
6. A description of what stage or stages of the business lifecycle the Accelerator will be focusing on and offering services for (ie. Development/Seed Stage, Start-Up Stage, Growth/Survival, etc.). Please provide a justification for the approach;
7. Quantifiable metrics by which the success of the Accelerator will be evaluated. Sample metrics include, but are not limited to: # of cohort participants, # of applicants, funding raised by program graduates, jobs created, etc.
8. Recommendations for improvements/changes for future cohorts;
9. Other tasks, as applicable.

D. Timeline

Include a timeline that outlines major tasks and subtasks, and expected milestones. Please include the duration of time the accelerator will be operational. A minimum of six weeks is expected.

E. Space

The Accelerator must have a physical location within Glendale. The respondent must identify a location that will be available to Accelerator companies throughout the length of the program. Indicate the office specifications in this section: address, square footage, amenities, accessibility to Accelerator companies.

As an option, the City has identified two (2) city-owned spaces that the City may offer it at below market rate or at no cost during the pilot accelerator program.

1. 250 N. Orange Street – 2,500 sq. feet of office space in mid Brand Boulevard.
2. Downtown Central Library (222 E. Harvard) – The recently renovated Central Library provides flexible meeting and office space. It includes a Digital lab, MakerSpace, a variety of other tech-focused amenities.

F. Branding and Marketing

Respondents should develop an effective marketing and branding approach for the Accelerator. This may include, but is not limited to: logo, style guide, website, other marketing materials.

Furthermore, the Accelerator should connect to and leverage Glendale's existing technology and innovation ecosystem. Respondents should commit to engage the Glendale tech ecosystem by coordinating a series of events and/or activities to market itself to the community. Suggested activities include:

1. Featuring the Accelerator at one or more Glendale “Tech on Tap” events, which is a monthly meet-up currently operated by the City of Glendale’s Economic Development Division;
2. Hosting Tech on Tap events at the Accelerator.
3. Hosting a community “open house” featuring Accelerator participants;
4. Hosting Glendale Community College (GCC) students interested in technology at the Accelerator to expose them to careers in the tech industry;
5. Hiring GCC interns to serve as support staff and to increase exposure to tech the industry;
6. Recruiting GCC-based companies to participate in the Program; and,
7. Other activities, as identified by respondent.

G. Budget

Respondents must have a clear understanding of the financial resources pledged to the Accelerator. Respondents should provide a detailed budget outlining costs for the Accelerator, including direct labor, rent, travel, supplies, and other categories as applicable. The budget should clearly document: equity stake in Accelerator companies, in-kind contributions, participation fees, etc. The budget should describe the rationale behind the financing for the Accelerator, including a discussion of the risks and benefits of the proposed budget, the Respondent’s expectation of return on equity, and why this strategy is most advantageous to the City.

The budget should specify if City funds will be utilized development of the Accelerator. Given limited public resources, Respondents are encouraged to team with strategic partners to provide robust services and defray costs.

Respondents must provide Letters of Commitment for any in-kind or monetary contributions in excess of \$1,000.

AVAILABLE FUNDING & SERVICES

The City's Economic Development Division will enter into a one-year agreement with the selected respondent for an amount not to exceed \$50,000. Upon completion of the Accelerator program, the City and selected respondent, may, by mutual agreement, extend the contract for at least two (2) consecutive one (1) year options. Each extension will include a budget not to exceed \$50,000. The City may provide city-owned property at a below market rate, should the selected respondent elect to use it (See Section E, Space).

The City will also provide in-kind assistance through an assigned Glendale business concierge staffer on permitting, incentives, marketing, etc., especially for companies looking to locate within the City of Glendale post-program.

The selected respondent must demonstrate a commitment of \$100,000 to be considered. Financial commitment can be a combination of costs for equipment, staffing, programming, etc.

SELECTION CRITERIA

Evaluation of the proposals will be based upon:

- Overall responsiveness to the RFP;
- Organization and clarity of proposal related to the scope of work;
- Strength, innovation, and viability of the Program Plan;
- Firm experience with the development of accelerator programming;
- Qualification and experience of assigned personnel;
- Financial stability, readiness to proceed, and ability to meet City's general terms and conditions, including contract terms;
- Commitment to the Glendale tech community and proposed integration with the Glendale community at-large; and,
- References provided.

EVALUATION PROCESS

The RFP review committee may schedule interviews and/or presentations with short-listed proposers. Based on the outcome of the review committee's evaluation of proposals, a recommendation may be submitted to the City Council for consideration of award.

An award of contract occurs when the contract is approved for execution by the Glendale City Council. City Council selection of a proposer with whom the City enters into contract negotiations, or a review committee recommendation of an award or a recommendation by any other party does not constitute

an award of contract. The City expects, but does not guarantee, that the decision on selection of a firm will be made by the Glendale City Council on the date indicated below:

Schedule

The City's anticipated schedule for the selection of the most qualified Consultant, as follows:

- | | |
|--|------------------------------------|
| 1. Issuance of Request for Proposals | August 2, 2018 |
| 2. Pre-Bid Conference & Site Tour (Optional) | August 23, 2018 from 10 am to Noon |
| 3. Written Questions Due | August 30 by 5 pm |
| 4. Response to Written Question Issues | September 6, 2018 |
| 5. Submission Deadline | September 13, 2015 by 5 pm |
| 6. City Staff review of RFP's | Week of September 24, 2018 |
| 7. City Staff selection of Consultants | Week of October 22, 2018 |

Pre-Bid Conference & Site Tour (Optional)

The Economic Development Division has organized an optional Pre-Bid Conference and Site Tour to go over any questions, comments or concerns from prospective consultants. Attendance at the pre-proposal site tour is optional. This is scheduled for:

Thursday, August 23
10 am – Noon
250 N. Orange Street
Glendale, CA 91206

Please RSVP by emailing Ani Pogossian at apogossian@glendaleca.gov or by phone at (818) 548-2005 no later than Wednesday, August 22, 2018.

Witten Questions and Addenda

At the pre-proposal conference, information may be requested by those present. If anything is distributed in response to these requests, the information will also be mailed to all firms initially sent the RFP. There may also be additional inquiries by phone or by email submitted to the City. All inquiries should be received in writing by August 30. In an effort to provide equal information to all parties, responses to these inquiries will be issued on September 6, 2018, and will also be made available online.

SUBMISSION DEADLINE AND REQUIREMENTS

Proposers must submit four (4) copies of the proposal; all copies should be unbound and suitable for reproduction, and one electronic copy should be emailed to jhiramoto@glendaleca.gov. **Full proposals must be received by no later than Thursday, September 13, 2018 by 5:00pm. Proposals should be addressed and delivered to:**

City of Glendale - Economic Development Division
633 East Broadway, Suite 201
Glendale, CA 91206
ATTN: Jennifer McLain Hiramoto, Principal Economic Development Officer

ACCEPTANCE OF SUBMITTALS

At its sole discretion, the City may, for any reason, reject any and all submittals. The City may reject incomplete submittals or those lacking adequate information to allow effective evaluation of the submittal.

In addition to the written proposal submission, each qualified firm may be asked to make an oral presentation and be interviewed by a selection committee. Any oral interviews will be arranged with the individual identified in your proposal to receive notices.

NOTICE REGARDING DISCLOSURE OF CONTENTS OF DOCUMENTS

All responses to this Request for Proposals ("RFP") accepted by the City shall become the exclusive property of the City. Responses to this RFP shall remain exempt from public disclosure until negotiations with the winning proposer are complete. At that time all proposals accepted by the City shall become a matter of public record. Each element of a proposal which a developer desires to be non-disclosable as a public record must be so designated; non-disclosure cannot be guaranteed. Blanket statements or non-specific designations of "Trade Secret", "Confidential" or "Proprietary information" are not sufficient to protect documents submitted in response to this RFP from public disclosure, and such blanket statements or non-specific designations shall not bind the City in any way whatsoever, or prevent disclosure. If disclosure of responses to this RFP is required or permitted under the California Public Records Act or otherwise by law, the City shall not in any way be liable or responsible for the disclosure of any such records or part thereof.

EXHIBITS

Exhibit 1
Exhibit 2

Conflict of Interest Form
Professional Services Agreement

EXHIBIT1: CONFLICT OF INTEREST FORM



**City of Glendale
Disclosure - Campaign Finance Ordinance
Applicants Seeking Entitlement**

Submit to Permit Services Center, 633 E. Broadway, Rm. 101.
For more information, call 818-548-3200.

(To be Completed Prior to Preparation of Staff Reports for Consideration of Entitlement Matter by Council, Agency, or Authority, or at Time of Appeal to the City Council if the Applicant is also the Appellant)

In August 2011, the Glendale City Council adopted Ordinance No. 5744, which becomes effective on September 9, 2011 ("Ordinance"). The Ordinance prohibits campaign contributions from "applicants seeking entitlement," their contractors and subcontractors (including their architects, engineers, and design professionals) while the application is "pending" and for 12 months thereafter. The Ordinance also prohibits Council Members from voting on any matter pertaining to an entitlement if the Council member has received a campaign contribution from the applicant seeking the entitlement, or certain contractors or subcontractors of the applicant, within the 12-month period preceding the vote.

The Applicant and the Owner/Lessor hereby discloses as follows.

(If printing, please print legibly. Use additional sheets as necessary.)

I. Name of Applicant and Name of Owner/Lessor on whose behalf application is filed:

Full Name	Title	Business Address	City	State	Zip

II. Officers or owners/investors of Applicant Entity. Please also disclose the following persons or entities related to the applicant entity: CEO/President, Chairperson, Chief Operations Officer, Chief Financial Officer, any member of the Board of Directors, and any individual or entity that owns 10% or more the contractor of applicant seeking entitlement, as well as any campaign +

Full Name	Title	Business Address	City	State	Zip

III. Contractor of Applicant(s) Seeking Entitlement*

Full Name	Title	Business Address	City	State	Zip

* "Contractor of Applicant Seeking Entitlement" means "a person who has, or has been promised, a contract as an architect, design professional, engineer, or general or prime contract with an applicant seeking entitlement. "Contractor of applicant seeking entitlement," includes not only the contracting party but also the CEO/President, Chairperson, Chief Operations Officer, Chief Financial Officer, any member of the Board of Directors, and any individual or entity that owns 10% or more the contractor of applicant seeking entitlement, as well as any campaign committee that is sponsored and controlled by the contracting party. Please list the names and addresses of all of these parties.

IV. Subcontractor of Applicant(s) Seeking Entitlement**

Full Name	Title	Business Address	City	State	Zip

** "Subcontractor of Applicant Seeking Entitlement" means "a person who has, or has been promised, a subcontract as an architect, design professional, engineer, or perform other work with a contractor an applicant seeking entitlement."

"Subcontractor of applicant seeking entitlement," includes not only the subcontracting party, but also the CEO/President, Chairperson, Chief Operations Officer, Chief Financial Officer, any member of the Board of Directors, and any individual or entity that owns 10% or more the subcontractor of applicant seeking entitlement, as well as any campaign committee that is sponsored and controlled by the subcontracting party. Please list the name and addresses of all of these parties.

V. Disclosure. The Applicant Seeking Entitlement has made campaign or officeholder contributions in the preceding 12 months to City of Glendale elected officials as follows:

Elected Official	Name of Individual or Entity	Date of Contribution

I hereby certify, on behalf of the above-named applicant(s) and owner(s)/lessor(s), that the applicant seeking entitlement has made the campaign contributions as set forth above. I also certify that the names of all contractors of applicant and all subcontractors of applicant, as of today's date, are fully set forth above. I further acknowledge that the applicant has a continuing obligation to update this disclosure form if the applicant selects additional or substitute architects, design professionals, contractors or subcontractors within ten (10) days of the selection or change. I hereby certify that I have been legally authorized by the applicant/owner/lessor to submit this disclosure form and certify to the content hereof.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on _____ at _____, California

Applicant's Signature _____, Print Applicant's Full Name _____

Applicant's Address _____

Applicant's Contact Phone Number _____

Applicant's Email Address _____



ACKNOWLEDGMENT OF RECEIPT OF CAMPAIGN FINANCE DISCLOSURE

(To Be Submitted at Time of Application Submittal)

Submit to Permit Services Center, 633 E. Broadway, Rm. 101. For more
information call 818-548-3200.

PROPERTY ADDRESS: _____

ENTITLEMENTS REQUESTED: _____

I hereby acknowledge, on behalf of the applicant(s) and owner(s)/lessor(s) for the project above, that the applicant seeking entitlement has received the campaign finance disclosure forms related to applicants seeking entitlement before the City Council, Redevelopment Agency and Housing Authority. I acknowledge it is the applicant's responsibility to review the requirements of the City's campaign finance ordinance, including its disclosure obligations and its applicability to the applicant and its contractors and subcontractors, which include architects, engineers, design professionals, prime or general contractors, and subcontractors retained by the applicant at the time the application is pending before the Council, Redevelopment Agency or Housing Authority.

Executed on _____ at _____, California

Applicant's Signature _____,

Print Applicant's Full Name _____

EXHIBIT2: DRAFT PROFESSIONAL SERVICES AGREEMENT*

** Proposers are not required to fill this out at the time of submitting the proposal. However, Proposers are encouraged to review to become aware of the City's standard Professional Services Agreement prior to applying.*

CONTRACT No. _____

PROFESSIONAL SERVICES AGREEMENT

BETWEEN THE CITY OF GLENDALE

AND

THIS AGREEMENT ("Agreement"), effective _____, 20__ ("Effective Date"), is between the City of Glendale ("CITY"), a municipal corporation, and _____ ("CONSULTANT"), a [(Name of State) corporation/ partnership/ limited partnership/ limited liability company/ a sole proprietor/ an individual] (collectively, "PARTIES" or individually, "PARTY").

RECITALS

A. CITY is a public entity organized and existing under its Charter and the State of California's Constitution.

B. CONSULTANT represents that CONSULTANT is, and will continue to be for this Agreement's duration, a [(Name of State) corporation in good standing/ partnership/ limited partnership/ limited liability company/ a sole proprietorship/ an individual.] **[NOTE: staff must verify corporate status/ partnership/ LLC and Consultant's license, if any, and obtain proof.]** **[ADD, IF APPLICABLE: (which) (who) employs persons who are duly registered or licensed to practice in the State of California.]**

C. CONSULTANT possesses the competence, experience, expertise, skill, facilities, equipment, personnel, financial wherewithal, and other resources necessary to perform this Agreement's tasks in a professional and competent manner.

D. CONSULTANT desires to furnish and perform professional services for CITY, on the terms and conditions described in this Agreement. CONSULTANT has the legal authority to provide, engage in, and carry out the professional services set forth in this Agreement.

AGREEMENT

THEREFORE, CITY engages CONSULTANT's services, and in consideration of the PARTIES' mutual promises, the PARTIES agree as follows:

1.0 INCORPORATION OF RECITALS

1.1. The Recitals constitute the factual basis upon which CITY and CONSULTANT have entered into this Agreement. CITY and CONSULTANT acknowledge the Recitals' accuracy and, therefore, incorporate them into this Agreement.

2.0 TERM

[Select one of the following alternatives:]

2.1. **[OPTION 1]** This Agreement begins on the Effective Date, and continues in effect until completion of the work described in Article 3, unless this Agreement ends sooner according to the terms elsewhere in this document.

2.1. **[OPTION 2]** This Agreement's Term is [#] [months/ years], beginning on ____ [DATE] ____ and ending on ____ [DATE] ____, unless this Agreement ends sooner according to the terms elsewhere in this document.

3.0 SERVICES

3.1. **Scope of Work.** CONSULTANT shall [specify services to be provided] ("the Services") in accordance with the Scope of Work, which is attached as "Exhibit A" to this Agreement and is incorporated into it by this reference. **[NOTE: "Exhibit A" must set forth in detail the nature and extent of services that professional person or firm will render. Scope of Work should identify specific tasks, list and describe any deliverables, and specify procedures/ criteria for acceptance.]**

3.2. Written Authorization.

(A) CONSULTANT shall not make changes in the Scope of Work, perform any additional work, or provide any additional material, without first obtaining written authorization from CITY. If CONSULTANT provides additional services or materials without written authorization, or if CONSULTANT exceeds the Maximum Cost in Paragraph 7.4 of this Agreement, CONSULTANT proceeds at CONSULTANT's own risk and without payment.

(B) CITY will authorize CONSULTANT to proceed with discrete tasks by issuing written Task Orders. Receipt of a written Task Order, signed by CITY's Project Manager, is a prerequisite for CONSULTANT to proceed with each task. **[ADD, IF APPLICABLE:** Each Task Order will specify a not-to-exceed price and a schedule for completion of the task. CONSULTANT shall not exceed the not-to-exceed price in each Task Order.] In performing each phase or task, CONSULTANT shall not exceed the Maximum Cost in Paragraph 7.4 of this

Agreement. Issuance of a Task Order neither authorizes CONSULTANT to incur expenditures in excess of the Maximum Cost, nor relieves CONSULTANT from its responsibility for completing all of the Services within the Maximum Cost.

3.3. **Professional Standard of Care.** During this Agreement's Term:

(A) CONSULTANT and its Subconsultants, subcontractors, employees, and agents (collectively, "CONSULTANT PARTIES") shall perform all of the Services in this Agreement in an expeditious and professional manner, using professionals properly licensed and duly qualified to perform the Services.

(B) CONSULTANT PARTIES shall perform the work described in this Agreement in accordance with generally accepted professional practices and principles, and in a manner consistent with the level of care and skill ordinarily exercised under similar conditions by members of CONSULTANT PARTIES' profession currently practicing in California. By delivering the completed work, CONSULTANT PARTIES represent and certify that their work conforms to: the requirements of this Agreement; all applicable (federal, state, county, local, CITY) laws, rules, regulations, orders, and procedures; and the professional standard of care in California.

(C) CONSULTANT PARTIES are responsible for making an independent evaluation and judgment of all conditions affecting performance of the work, including without limitation: site conditions; existing facilities; seismic, geologic, soils, hydrologic, geographic, climatic conditions; applicable (federal, state, county, local, CITY) laws, rules, regulations, orders, and procedures; and all other contingencies or design considerations. Data, calculations, opinions, reports, investigations, or any other information or documents that CITY provides relating to site, local, or other conditions are not warranted or guaranteed, either expressly or implied, by CITY.

(D) When the Scope of Work requires or permits CITY's review, approval, conditional approval, or disapproval, CONSULTANT acknowledges that CITY's review, approval, conditional approval, or disapproval:

- (1) Is solely for the purposes of administering this Agreement and determining whether CONSULTANT is entitled to payment for its Services;
- (2) Is not to be construed as a waiver of any breach, or acceptance by CITY, of any responsibility— professional or otherwise— for the Services or CONSULTANT's work product;
- (3) Does not relieve CONSULTANT of the responsibility for complying with the standard of performance or professional care; or laws, regulations, or industry standards; and
- (4) Does not relieve CONSULTANT from liability for damages arising out of CONSULTANT's: negligent acts, errors, or omissions; recklessness; willful misconduct; or noncompliance with industry standards.

(E) Without additional compensation to CONSULTANT and at no cost to CITY, CONSULTANT shall correct or revise all errors, mistakes, or deficiencies in its work product, studies, reports, designs, drawings, specifications, or other services.

4.0 TIME FOR PERFORMANCE

[Select one of the following alternatives:]

4.1. **[OPTION 1]** CONSULTANT shall complete all of the Services by [DATE] .

4.1. **[OPTION 2]** CONSULTANT shall perform the Services according to the Project Time Schedule, which is attached as “Exhibit B” to this Agreement and is incorporated into it by this reference. CONSULTANT shall complete all of the Services by [DATE] .

4.2. If the Project Time Schedule calls for performance of the Services in phases or discrete increments, CONSULTANT shall not proceed from one phase or increment to the next without written authorization from CITY’s Project Manager.

4.3. **Force Majeure.** If an event or condition constituting a “force majeure”— including, but not limited to, an act of God, labor dispute, civil unrest, epidemic, or natural disaster— prevents or delays a PARTY from performing or fulfilling an obligation under this Agreement, the PARTY is not in Default, under Paragraph 13.1 of this Agreement, of the obligation. A delay beyond a PARTY’s control automatically extends the time, in an amount equal to the period of the delay, for the PARTY to perform the obligation under this Agreement. The PARTIES shall prepare and sign an appropriate document acknowledging any extension of time under this Paragraph.

5.0 PERSONNEL

5.1. **Project Management.** Each PARTY shall appoint a Project Manager. The Project Managers shall meet [**SET FORTH SPECIFIC TIMES:** hourly/ daily/ weekly/ as needed] to coordinate, review, and ensure CONSULTANT’s performance under this Agreement. CITY’s Project Manager will oversee the administration of CONSULTANT’s tasks under this Agreement.

5.2. **Key Personnel.** CONSULTANT’s project team shall work under the direction of the following key personnel [IDENTIFY CONSULTANT’S KEY PERSONNEL AND TITLE] . **[OR STATE:** CONSULTANT shall employ the key personnel identified in “Exhibit A.”] CONSULTANT shall minimize changes to its key personnel. CITY may request key personnel changes, and CITY may review and approve key personnel changes proposed by CONSULTANT. CITY will not unreasonably withhold approval of key personnel assignments and changes.

5.3. **Use of Agents or Assistants.** With CITY’s prior written approval, CONSULTANT may employ, engage, or retain the services of persons or entities (“Subconsultants”) that CONSULTANT may deem proper to aid or assist in the proper performance of CONSULTANT’s duties. CITY is an intended beneficiary of all work that the Subconsultants perform for purposes of establishing a duty of care between the Subconsultants and CITY.

CONSULTANT is as responsible for the performance of its Subconsultants as it would be if it had rendered the Services itself. All costs of the tasks performed or the expenses incurred by the Subconsultants are chargeable directly to CONSULTANT. Nothing in this Agreement constitutes or creates a contractual relationship between CITY and anyone other than CONSULTANT.

5.4. **Independent Contractor.**

(A) CONSULTANT understands and acknowledges that CONSULTANT is an independent contractor, not an employee, partner, agent, or principal of CITY. This Agreement does not create a partnership, joint venture, association, or employer-employee relationship between the PARTIES. At its own expense, CONSULTANT is responsible for providing compensation; employment benefits; disability, unemployment, and other insurance; workers' compensation; training; permits and licenses; and office space for CONSULTANT and for CONSULTANT's employees and Subconsultants. CONSULTANT has, and shall retain, the right to exercise full control over the employment, direction, compensation, and discharge of all persons whom CONSULTANT uses in performing the Services under this Agreement. CONSULTANT shall provide the Services in CONSULTANT's own manner and method, except as this Agreement specifies. CONSULTANT shall treat a provision in this Agreement that may appear either to give CITY the right to direct CONSULTANT as to the details of doing the work, or to exercise a measure of control over the work, as giving CONSULTANT direction only as to the work's end result.

(B) CONSULTANT shall indemnify, defend (including CONSULTANT's providing and paying for legal counsel for CITY), and hold harmless CITY for any obligation; claim; suit; demand for tax or retirement contribution, including any contribution or payment to the Public Employees Retirement System (PERS); social security; salary or wages; overtime, penalty, or interest payment; or workers' compensation payment that CITY may be required to make on behalf of CONSULTANT, an employee of CONSULTANT, or any employee of CONSULTANT construed to be an employee of CITY, for the work done under this Agreement.

5.5. **Non-Discrimination in Employment.** CONSULTANT shall not discriminate against any employee or person who is subject to this Agreement because of race, color, religion, religious belief, national origin, ancestry, citizenship, age, sex, sexual orientation, marital status, pregnancy, parenthood, medical condition, or physical or mental disability.

5.6. **Disability Access Laws.** CONSULTANT represents and certifies that the work product, studies, reports, designs, drawings, and specifications that CONSULTANT prepares under this Agreement fully conform to all applicable disability access and design laws, regulations, and standards— including, but not limited to, the Americans with Disabilities Act (42 U.S.C. Sections 12101 *et seq.*) and Title 24 of the California Code of Regulations— when the Scope of Work requires or calls for compliance with those laws, regulations, or standards.

5.7. **Prevailing Wage Laws.** Services by persons deemed to be employees of CONSULTANT possibly may be subject to prevailing wages under California Labor Code Sections 1770-1781. CONSULTANT's sole responsibility is to comply with those requirements, should they apply. If a dispute based upon the prevailing wage laws occurs, CONSULTANT, at its expense, shall indemnify, defend (including CONSULTANT's providing and paying for legal counsel for CITY), and hold harmless CITY, its officers, agents, employees, and representatives from and against all liability, claims, suits, demands, damages, fines, penalties, wages, costs, or expenses pertaining to the prevailing wage laws.

5.8. **Workers' Compensation.** CONSULTANT understands and acknowledges that all persons furnishing services to CITY under this Agreement are, for the purpose of workers' compensation liability, employees solely of CONSULTANT and not of CITY. In performing the Services or the work under this Agreement, CONSULTANT is liable for providing workers' compensation benefits to CONSULTANT's employees, or anyone whom CONSULTANT directly or indirectly hires, employs, or uses. CITY is not responsible for any claims at law or in equity caused by CONSULTANT's failure to comply with this Paragraph.

6.0 **FACILITIES**

6.1. CONSULTANT shall provide all facilities necessary to fully perform and complete the Services. If CONSULTANT needs to use a CITY facility, CONSULTANT shall meet and confer with CITY before CONSULTANT begins the work that this Agreement requires, the PARTIES shall agree to any costs chargeable to CONSULTANT, and in an amendment to this Agreement, the PARTIES shall describe the facility's terms of use and its charges.

6.2. CONSULTANT shall pay for any damage to CITY property, facilities, structures, or streets arising out of CONSULTANT's use, occupation, operation, or activities in, upon, under, or over any portion of them.

7.0 **PAYMENT**

7.1. CITY's payment to CONSULTANT will be based upon CONSULTANT's Fee Schedule, which is attached as "Exhibit C" to this Agreement and is incorporated into it by this reference. ***[NOTE: "Exhibit C" must include a breakdown of the not-to-exceed amount, including hourly rates for project staff, any overtime rates, a list and the rate for any reimbursable expenses, or a statement that costs are included in the hourly rate, and an explanation of any mark-ups.]*** Except as itemized in the Fee Schedule, CONSULTANT shall pay for all expenses, including reimbursable or out-of-pocket expenses that CONSULTANT incurs in performing the Services. The Fee Schedule will remain in effect for the Agreement's Term.

[Select one of the following provisions:]

7.2. **Fee.** **[OPTION 1]** CITY shall pay for the Services in a lump sum, which is not to exceed _____ dollars (\$_____), upon CONSULTANT's satisfactory completion of the Services and CONSULTANT's delivery of the work product.

7.2. **Fee.** **[OPTION 2]** CITY shall pay for the Services that CONSULTANT performs in accordance with this Agreement at the hourly rate(s) specified in "Exhibit C," the TOTAL amount of which is not to exceed _____ dollars (\$_____).

7.2. **Fee.** **[OPTION 3]** CITY shall pay for the Services in _____ **[IF PAYMENTS ARE IN INTERVALS, SPECIFY A PERIOD (e.g., monthly/ quarterly) OR SPECIFY A QUANTITY (e.g., two, three, five)]** installments, the TOTAL amount of which is not to exceed _____ dollars (\$_____). Each installment will be payable upon satisfactory completion, in CITY's determination, of the work in each phase identified below, and in an amount proportionate to the work CONSULTANT performed or completed within each phase:

<u>Phase:</u>	<u>Description:</u>	<u>Amount:</u>
I –	[Example: Construction Documents]	\$ _____
II –	[Example: Bid Documents]	\$ _____
III –	[Example: Construction Support]	\$ _____
IV –	[Example: Project 's Closeout]	\$ _____
TOTAL		\$ _____

7.3. If CITY requires additional work not included in this Agreement, CONSULTANT and CITY shall negotiate the additional work, mutually agree on the amount of additional compensation, and memorialize the terms in either a separate written contract or an amendment to this Agreement.

7.4. **Maximum Cost.** CONSULTANT expressly acknowledges that the total cost to complete all tasks set forth in “Exhibit A” must not exceed _____ dollars (\$ _____) (“Maximum Cost”). When CONSULTANT has billed 75% of the Maximum Cost, CONSULTANT shall provide written notice to CITY’s Project Manager that CONSULTANT has expended 75% of the Maximum Cost.

7.5. **Taxes.** CONSULTANT shall pay all applicable (federal, state, county, local, CITY) excise, sales, consumer use, possessory interest, or other similar taxes required by law that are levied upon this Agreement or upon CONSULTANT’s services under this Agreement.

7.6. **Invoices.** CONSULTANT shall submit an original, itemized invoice to CITY for approval, before receiving compensation. CONSULTANT shall submit the invoice at no more than monthly intervals. All invoices must include a summary of total costs, description of the Services performed, a brief itemization of costs associated with each task or phase, and the total phase or project costs to date.

8.0 AUDIT BY CITY

8.1. During this Agreement’s Term and for a period of four (4) years after the expiration, cancellation, or termination of this Agreement, or any extension of it, CONSULTANT shall:

(A) Keep and maintain, in their original form, all records, books, papers, or documents related to CONSULTANT’s performance of this Agreement; and

(B) Permit CITY or its authorized representatives, at all reasonable times, to have access to, examine, audit, excerpt, copy, photocopy, photograph, or transcribe all records, books, papers, or documents related to CONSULTANT’s performance of this Agreement including, but not limited to: direct and indirect charges, and detailed documentation, for work CONSULTANT has performed or will perform under this Agreement.

9.0 DATA, RECORDS, PROPRIETARY RIGHTS

9.1. **Copies of Data.** CONSULTANT shall provide CITY with copies or originals of all data that CONSULTANT generates, uses, collects, or stores in relation to all work associated with this Agreement. Data that CONSULTANT generates, uses, collects, stores, or provides must be in a form acceptable to, and agreed upon by, CITY.

9.2. **Ownership and Use.**

(A) Unless CITY states otherwise in writing, each document— including, but not limited to, each report, draft, record, drawing, or specification (collectively, “work product”)— that CONSULTANT prepares, reproduces, or causes its preparation or reproduction for this Agreement is CITY’s exclusive property.

(B) CONSULTANT acknowledges that its use of the work product is limited to the purposes contemplated by the Scope of Work. CONSULTANT makes no representation of the work product’s application to, or suitability for use in, circumstances not contemplated by the Scope of Work.

9.3. **Intellectual Property.**

(A) If CONSULTANT uses or incorporates patented, trademarked, or copyrighted work, ideas, or products— in whole or in part— into CONSULTANT’s work product, CONSULTANT represents that:

- (1) CONSULTANT holds the patent, trademark, or copyright to the work, idea, or product; or
- (2) CONSULTANT is licensed to use the patented, trademarked, or copyrighted work, idea, or product.

(B) Unless CITY states otherwise in writing, all proprietary rights or intellectual property rights, including copyrights, that arise from creation of the work under this Agreement vest in CITY. CONSULTANT waives and relinquishes all claims to proprietary rights and intellectual property rights, including copyrights, in favor of CITY.

(C) CONSULTANT shall indemnify, defend (including CONSULTANT’s providing and paying for legal counsel for CITY), and hold harmless CITY, its officers, agents, employees, and representatives from and against all liability, claims, suits, demands, damages, royalties, fines, penalties, costs, or expenses arising out of or alleging any infringement or misappropriation of a patent, copyright, trade secret, trade name, trademark, or other intellectual property right or proprietary right.

9.4. **Confidentiality.** CONSULTANT shall not use any information that it obtains from performing the Services for any purpose other than for fulfillment of CONSULTANT’s Scope of Work. Without CITY’s prior written authorization, CONSULTANT shall not disclose or publish— or authorize, permit, or allow others to disclose or publish— data, drawings, designs, specifications, reports, or other information relating to the Services or the work that CITY assigns to CONSULTANT or to which CONSULTANT has access.

9.5. **Public Records Act.**

(A) CONSULTANT acknowledges that this Agreement is a public record. This Agreement, its Exhibits, and all documents produced under this Agreement are subject to the California Public Records Act

(Government Code Sections 6250 *et seq.*), including its exemptions. CONSULTANT acknowledges that CITY has no obligation to notify CONSULTANT when a request for records is received.

(B) CONSULTANT shall identify in advance all records, or portions of them, that CONSULTANT believes are exempt from production under the Public Records Act.

(C) If CONSULTANT claims a privilege against public disclosure or otherwise objects to the records' disclosure, then:

(1) CONSULTANT may, when notified by CITY of the request, seek protection from disclosure by timely applying for relief in a court of competent jurisdiction; or

(2) CITY may either decline to produce the requested information, or redact portions of the documents and produce the redacted records.

(D) If CONSULTANT fails to identify one or more protectable documents, in CITY's sole discretion, and without its being in breach of this Agreement or its incurring liability to CONSULTANT, CITY may produce the records— in whole, in part, or redacted— or may decline to produce them.

(E) CONSULTANT shall indemnify, defend (including CONSULTANT's providing and paying for legal counsel for CITY), and hold harmless CITY, its officers, agents, employees, and representatives from and against all liability, claims, suits, demands, damages, fines, penalties, costs, or expenses arising out of or alleging CITY's refusal to publicly disclose one or more records that CONSULTANT identifies as protectable, or asserts is protectable.

10.0 CONFLICT OF INTEREST; CAMPAIGN CONTRIBUTIONS

10.1. **Conflict of Interest.** CONSULTANT represents and certifies that:

(A) CONSULTANT's personnel are not currently officers, agents, employees, representatives, or elected officials of CITY;

(B) CONSULTANT will not employ or hire a CITY officer, agent, employee, representative, or elected official during this Agreement's Term;

(C) CITY's officers, agents, employees, representatives, and elected officials do not, and will not, have any direct or indirect financial interest in this Agreement; and

(D) During this Agreement's Term, CONSULTANT will inform CITY about any possible conflict of interest that may arise as a result of any change in circumstances.

10.2. **Campaign Contributions.**

(A) CONSULTANT and its Subconsultants shall fully comply with Glendale Municipal Code Section 1.10.060, which places limitations on CONSULTANT's and its Subconsultants' ability to make campaign contributions to certain elected City officials or candidates for elected City office. Specifically, Section 1.10.060 prohibits:

- (1) A consultant (including a subconsultant)— who has a contract with the City of Glendale, Glendale Successor Agency, or the Housing Authority of the City of Glendale and that contract is subject to approval by the City Council, Successor Agency, or Housing Authority— from making a contribution to a City Council member, City Clerk, or City Treasurer, when the contract has a total anticipated or actual value of \$50,000 or more, or a combination or series of contracts having a value of \$50,000 or more; and
- (2) A City Council member, Successor Agency member, or Housing Authority member from voting on a contract in which a consultant (or a subconsultant) has provided a campaign contribution.

(B) CONSULTANT acknowledges that even if the Maximum Cost in Paragraph 7.4 of this Agreement is less than \$50,000, CONSULTANT still may be subject to the campaign contribution limitations in Municipal Code Section 1.10.060, when:

- (1) CONSULTANT and CITY amend the Scope of Services in this Agreement which increases the Maximum Cost to equal or exceed \$50,000; or
- (2) CITY, Glendale Successor Agency, or the Housing Authority awards CONSULTANT another contract which has a total anticipated or actual value of \$50,000 or more, or awards CONSULTANT a combination or series of contracts which have a value of \$50,000 or more.

(C) CONSULTANT represents and certifies that:

- (1) CONSULTANT has read and fully understands the provisions of Municipal Code Section 1.10.060;
- (2) CONSULTANT will not: (a) make a prohibited campaign contribution to an individual holding CITY elective office; or (b) otherwise violate Municipal Code Section 1.10.060; and
- (3) CONSULTANT shall timely complete, return, and update one or more disclosure or reporting forms that CITY provides.

11.0 INSURANCE

11.1. When CONSULTANT signs and delivers this Agreement to CITY, and during this Agreement's Term, CONSULTANT shall furnish CITY with insurance forms that fully meet the requirements of— and contain provisions entirely consistent with— all of the "Insurance Requirements," which are attached as "Exhibit D" (D-1 to D-___) to this Agreement and are incorporated into it by this reference.

11.2. This Agreement's insurance provisions:

(A) Are separate and independent from the indemnification and defense provisions in Article 12 of the Agreement; and

(B) Do not limit, in any way, the applicability, scope, or obligations of the indemnification and defense provisions in Article 12 of the Agreement.

12.0 INDEMNITY

12.1. To the maximum extent permitted by law— including, but not limited to, California Civil Code Section 2778— CONSULTANT, its employees, agents, Subconsultants, and persons whom CONSULTANT employs or hires (individually and collectively, “CONSULTANT INDEMNITOR”) shall indemnify, defend, and hold harmless CITY, its officers, agents, employees, and representatives (individually and collectively, “CITY INDEMNITEE”) from and against a “**liability**” [as defined in Subparagraph (A) below], or an “**expense**” [as defined in Subparagraph (B) below], or both, that arise out of, pertain to, or relate to an act, error, or omission of a CONSULTANT INDEMNITOR:

(A) “**Liability**” means claims, suits, actions, causes of action, proceedings, judgments, decrees, awards, settlements, liens, losses, damages, injuries, or liability of any kind, whether the **liability** is:

- (1) Actual or alleged;
- (2) In contract or in tort; or
- (3) For bodily injury (including accidental death), personal injury, advertising injury, or property damage.

(B) “**Expense**” means fees, costs, sums, penalties, fines, charges, or expenses of any kind, including, but not limited to:

- (1) Attorney’s fees;
- (2) Costs of an investigation, litigation, arbitration, mediation, administrative or regulatory proceeding, or appeal;
- (3) Fees of an accountant, expert witness, consultant, or other professional; or
- (4) Pre or post: judgment interest or settlement interest.

12.2. Under this Article, CONSULTANT INDEMNITOR’s defense and indemnification obligations:

(A) Apply to a **liability**, or an **expense**, or both, that arise out of, pertain to, or relate to the actual or alleged passive negligence of a CITY INDEMNITEE; but

(B) Do not apply to a **liability**, or an **expense**, or both, that arise out of, pertain to, or relate to the sole active negligence or willful misconduct of a CITY INDEMNITEE.

12.3. To the extent that CONSULTANT INDEMNITOR’s insurance policy provides an upfront defense to CITY, CONSULTANT INDEMNITOR’s obligation to defend a CITY INDEMNITEE under this Article:

(A) Means that CONSULTANT INDEMNITOR shall provide and pay for legal counsel, acceptable to CITY, for the CITY INDEMNITEE;

(B) Occurs when a claim, suit, complaint, pleading, or action against a CITY INDEMNITEE arises out of, pertains to, relates to, or asserts an act, error, or omission of CONSULTANT INDEMNITOR; and

(C) Arises regardless of whether a claim, suit, complaint, pleading, or action specifically names or identifies CONSULTANT INDEMNITOR.

12.4. Paragraph 12.3 does not limit or extinguish CONSULTANT INDEMNITOR's obligation to reimburse a CITY INDEMNITEE for the costs of defending the CITY INDEMNITEE against a **liability**, or an **expense**, or both. A CITY INDEMNITEE's right to recover defense costs and attorney's fees under this Article does not require, and is not contingent upon, the CITY INDEMNITEE's first:

(A) Requesting that CONSULTANT INDEMNITOR provide a defense to the CITY INDEMNITEE;
or

(B) Obtaining CONSULTANT INDEMNITOR's consent to the CITY INDEMNITEE's tender of defense.

12.5. If CONSULTANT subcontracts all or any portion of the Services under this Agreement, CONSULTANT shall provide CITY with a written agreement from each Subconsultant, who must indemnify, defend, and hold harmless CITY INDEMNITEE under the terms in this Article.

12.6. CONSULTANT INDEMNITOR's obligation to indemnify, defend, and hold harmless CITY will remain in effect and will be binding upon CONSULTANT INDEMNITOR whether the **liability**, or the **expense**, or both, accrues— or is discovered— before or after this Agreement's expiration, cancellation, or termination.

12.7. Except for Paragraph 12.3, this Article's indemnification and defense provisions are separate and independent from the insurance provisions in Article 11. In addition, the indemnification and defense provisions in this Article:

(A) Are neither limited to nor capped at the coverage amounts specified under the insurance provisions in Article 11; and

(B) Do not limit, in any way, the applicability, scope, or obligations of the insurance provisions in Article 11.

13.0 DEFAULT, REMEDIES, AND TERMINATION

13.1. **Default.** Default under this Agreement occurs upon any one or more of the following events:

- (A) CONSULTANT refuses or fails— whether partially, fully, temporarily, or otherwise— to:
 - (1) Provide or maintain enough properly trained personnel, or licensed personnel, or both, to perform the Services that this Agreement requires;
 - (2) Pay for, obtain, maintain, or renew the insurance policies or coverages that this Agreement requires;
 - (3) Comply with indemnification, defense, or hold harmless provisions that this Agreement requires; or

(B) CONSULTANT, or its personnel, or both— whether partially, fully, temporarily, or otherwise:

- (1) Disregards or violates a law, ordinance, rule, procedure, regulation, directive, or order;
- (2) Refuses or fails to pay for, obtain, maintain, or renew requisite licenses;
- (3) Refuses or fails to observe, perform, or fulfill a covenant, condition, obligation, term, or provision of this Agreement;
- (4) Commits an unlawful, false, fraudulent, dishonest, deceptive, or dangerous act while performing the Services under this Agreement; or

(C) CONSULTANT:

- (1) Or another party for or on behalf of CONSULTANT: institutes proceedings under any bankruptcy, reorganization, receivership or other insolvency; or assigns or transfers assets to its creditors;
- (2) Delegates— whether in whole, in part, temporarily, or otherwise— its duties or obligations under this Agreement, without notifying CITY, or without CITY's written authorization;
- (3) Assigns, transfers, pledges, hypothecates, grants, or encumbers— whether in whole, in part, temporarily, or otherwise— this Agreement or any interest in it, without notifying CITY, or without CITY's written authorization;
- (4) Or one of its partners, directors, officers, or general managers, or a person who exercises managerial authority on CONSULTANT's behalf, is convicted under state or federal law, during this Agreement's Term, of embezzlement, theft, fraud, forgery, bribery, deceptive or unlawful business practices, perjury, falsifying or destroying records or evidence, receiving stolen property, or other offense indicating a lack of business integrity or business honesty; or

(D) Any other justifiable cause or reason, as reasonably determined by the City Manager, or a designee.

13.2. **Notice of Default.** If CITY deems that CONSULTANT is in Default, or that CONSULTANT has failed in any other respect to satisfactorily perform the Services specified in this Agreement, CITY may give written notice to CONSULTANT specifying the Default(s) that CONSULTANT shall remedy within [SELECT: 5/ 10/ 14/ 30] days after receiving the notice. The Notice of Default will set forth one or more bases for any dissatisfaction and may suggest corrective measures.

13.3. **Remedies upon Default.** Within [SELECT THE SAME NUMBER IN PARAGRAPH 13.2 ABOVE: 5/ 10/ 14/ 30] days after receiving CITY's Notice of Default, if CONSULTANT refuses or fails to remedy the Default(s), or if CONSULTANT does not commence steps to remedy the Default(s) to CITY's reasonable satisfaction, CITY may exercise any one or more of the following remedies:

(A) CITY may, in whole or in part and for any length of time, immediately suspend this Agreement until such time as CONSULTANT has corrected the Default;

(B) CITY may provide for the Services either through its own forces or from another consultant, and may withhold any money due (or may become owing to) CONSULTANT for a task related to the claimed Default;

(C) CITY may withhold all moneys, or a sum of money, due CONSULTANT under this Agreement, which in CITY's sole determination, are sufficient to secure CONSULTANT's performance of its duties and obligations under this Agreement;

(D) CITY may immediately terminate the Agreement;

(E) CITY may exercise any legal remedy, or equitable remedy, or both, including, but not limited to, filing and action in court:

(1) Seeking CONSULTANT's specific performance of all or any part of this Agreement; or

(2) Recovering damages for CONSULTANT's Default, breach, or violation of this Agreement; or

(F) CITY may pursue any other available, lawful right, remedy, or action.

13.4. **Termination for Convenience.** Independent of the remedies provided in Paragraph 13.3, CITY may elect to terminate this Agreement at any time upon [SELECT: 10/ 14/ 30] days' prior written notice. Upon termination, CONSULTANT shall receive compensation only for that work which CONSULTANT had satisfactorily completed to the termination date. CITY shall not pay CONSULTANT for de-mobilization, takedown, disengagement, wind-down, or other costs incurred arising out of this Agreement's termination.

14.0 GENERAL PROVISIONS

14.1. **Entire Agreement.** This Agreement represents the entire and integrated agreement between the PARTIES. This Agreement supersedes all prior and contemporaneous communications, negotiations, understandings, promises and agreements, either oral or written. Neither CONSULTANT nor CITY has made any promises or representations, other than those contained in this Agreement or those implied by law. The PARTIES may modify this Agreement, or any part of it, by a written amendment with CITY's and CONSULTANT's signature.

14.2. **Interpretation.** This Agreement is the product of negotiation and compromise by both PARTIES. Every provision in this Agreement must be interpreted as though the PARTIES equally participated in its drafting. Therefore, despite the provisions in California Civil Code Section 1654, if this Agreement's language is uncertain, the Agreement must not be construed against the PARTY causing the uncertainty to exist. In

interpreting this Agreement and resolving any ambiguities, this Agreement will take precedence over any cover page or attachments. If a conflict occurs between a provision in this Agreement and a provision in an attachment, the following order of precedence applies, with the terms and conditions in the document higher on the list governing over those lower on the list:

- (1) The Agreement.
- (2) Exhibit D.
- (3) Exhibit B.
- (4) Exhibit A.
- (5) Exhibit C.

14.3. **Headings.** All headings or captions in this Agreement are for convenience and reference only. They are not intended to define or limit the scope of any term, condition, or provision.

14.4. **Governing Law.** California's laws govern this Agreement's construction and interpretation. Unless this Agreement provides otherwise, any reference to laws, ordinances, rules, or regulations include their later amendments, modifications, and successor legislation.

14.5. **Waiver of Breach.** If a PARTY waives the other PARTY's breach of a term in this Agreement, that waiver is not treated as waiving a later breach of the term and does not prevent the PARTY from later enforcing that term, or any other term. A waiver of a term is valid only if it is in writing and signed by the PARTY waiving it. This Agreement's duties and obligations:

(A) Are cumulative (rather than alternative) and are in addition to (rather than a limitation on) any option, right, power, remedy, or privilege; and

(B) Are not exhausted by a PARTY's exercise of any one of them.

14.6. **Attorney's Fees.** If CITY or CONSULTANT brings an action at law or in equity to enforce or interpret one or more provisions of this Agreement, the "prevailing party" is entitled to "reasonable attorney's fees" in addition to any other relief to which the prevailing party may be entitled. A "prevailing party" has the same meaning as that term is defined in California Code of Civil Procedure Section 1032(a)(4). "Reasonable attorney's fees" of the City Attorney's office means the fees regularly charged by private attorneys who:

(A) Practice in a law firm located in Los Angeles County; and

(B) Have an equivalent number of years of professional experience in the subject matter area of the law for which the City Attorney's services were rendered.

14.7. **Further Assurances.** Upon CITY's request at any time, CONSULTANT shall promptly:

(A) Take further necessary action; and

(B) Sign, acknowledge, and deliver all additional documents as may be reasonable, necessary, or appropriate to carry out this Agreement's intent, purpose, and terms.

14.8. **Assignment.**

(A) This Agreement does not give any rights or benefits to anyone, other than to CITY and CONSULTANT. All duties, obligations, and responsibilities under this Agreement are for the sole and exclusive benefit of CITY and CONSULTANT, and are not for the benefit of another person, entity, or organization. Without CITY's prior written authorization, CONSULTANT shall not do any one or more of the following:

- (1) Assign or transfer a right or interest— whether in whole, in part, temporarily, or otherwise— in this Agreement; or
- (2) Delegate a duty or obligation owed— whether in whole, in part, temporarily, or otherwise— under this Agreement.

(B) Any actual or attempted assignment of rights or delegation of duties by CONSULTANT, without CITY's prior written authorization, is wholly void and totally ineffective for all purposes; and does not postpone, delay, alter, extinguish, or terminate CONSULTANT's duties, obligations, or responsibilities under this Agreement.

(C) If CITY consents to an assignment of rights, or a delegation of duties, or both, CONSULTANT's assignee or legal representative shall agree in writing to personally assume, perform, and to be bound unconditionally by the covenants, obligations, terms, and conditions in this Agreement.

14.9. **Successors and Assigns.** Subject to the provisions in Paragraph 14.8, this Agreement is binding on the heirs, executors, administrators, successors, and assigns of the respective PARTIES.

14.10. **Time is of the Essence.**

(A) Except when this Agreement states otherwise, time is of the essence in this Agreement. CONSULTANT acknowledges that this Agreement's time limits and deadlines are reasonable for CONSULTANT's performing the Services under this Agreement.

(B) Unless this Agreement specifies otherwise, any reference to "day" or "days" means calendar and not business days. If the last day for giving notice or performing an act under this Agreement falls on a weekend, a legal holiday listed in either Glendale Municipal Code Section 3.08.010 or California's Government Code, or a day when City Hall is closed, the period is extended to and including the next day that CITY is open for business. A reference to the time of day refers to local time for Glendale, California.

14.11. **Recycled Paper.** CONSULTANT shall endeavor to submit all reports, correspondence, and documents related to this Agreement on recycled paper.

14.12. **Notices.**

(A) The PARTIES shall submit in writing all notices and correspondence that this Agreement requires or permits, and shall deliver the notices and correspondence to the places set forth below. The PARTIES may give notice by:

- (1) Personal delivery;

- (2) U.S. mail, first class postage prepaid;
- (3) "Certified" U.S. mail, postage prepaid, return receipt requested; or
- (4) Facsimile.

(B) All written notices or correspondence sent in the described manner will be presumed "given" to a PARTY on whichever date occurs earliest:

- (1) The date of personal delivery;
- (2) The third (3rd) business day following deposit in the U.S. mail, when sent by "first class" mail;
- (3) The date on which the PARTY or its agent either signed the return receipt or refused to accept delivery, as noted on the return receipt or other U.S. Postal Service form, when sent by "certified" mail; or
- (4) The date of transmission, when sent by facsimile.

(C) At any time, by providing written notice to the other PARTY, CITY or CONSULTANT may change the place, or facsimile number, for giving notice.

CITY: City of Glendale

Dept.: _____

Glendale, CA 9120__

Attn: _____

Tel. No. _____

Fax. No. _____

CONSULTANT:

Attn: _____

Tel. No. _____

Fax. No. _____

14.13. **Survival.** This Paragraph and the obligations set forth in Paragraphs 5.4, 5.6, 5.7, 5.8, 7.5, 8.1, 9.1, 9.2, 9.3, 9.4, 9.5, 11.1, 11.2, 12.1, 12.2, 12.3, 12.4, 12.5, 12.6, 12.7, 13.3, 14.5, 14.6, 14.7, 14.8, 14.9, and 14.12 survive this Agreement's expiration, cancellation, or termination.

14.14. **Severability.** The invalidity, in whole or in part, of any term of this Agreement will not affect this Agreement's remaining terms.

14.15. **Counterparts.** This Agreement may be executed in counterparts, each of which is an original, but all of which constitutes one and the same document. The PARTIES shall sign a sufficient number of counterparts, so that each PARTY will receive a fully executed original of this Agreement.

14.16. **Representations – Authority.** The PARTIES represent that:

(A) They have read this Agreement, fully understand its contents, and have received a copy of it;

(B) Through their duly authorized representative, they are authorized to sign this Agreement, and they are bound by its terms; and

(C) They have executed this Agreement on the date opposite their signature.

Executed at Glendale, California.

CITY OF GLENDALE:

By _____
(Name) _____
(Title) _____

Date: _____, 20____

CONSULTANT:

By _____
(Name) _____
(Title) _____

Date: _____, 20____

APPROVED AS TO FORM:

City Attorney

Date

EXHIBIT LIST

“Exhibit A”: (__ pages)	Scope of Work
“Exhibit B”: (__ pages)	Project Time Schedule
“Exhibit C”: (__ pages)	Fee Schedule
“Exhibit D”: (__ pages)	Insurance Requirements

